

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 12756 of 2003

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

ASHOK C NAYAK

Versus

GUJARAT WATER SUPPLY & SEWERAGE BOARD

Appearance:

1. Special Civil Application No. 12756 of 2003
MR YH VYAS for Petitioner No. 1
MR HS MUNSHAW for Respondent No. 1
NOTICE SERVED BY DS for Respondent No. 2-3

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 30/09/2003

ORAL JUDGEMENT

Rule. Mr.Munsha waives service of rule on behalf
of the respondents. With the consent of the parties

matter is taken up for final hearing today.

2) The petitioner was given benefit of higher pay scale, in view of the scheme known as 9-18-27. The said benefit was given to the petitioner with effect from 1998, however, subsequently the respondents realised that the said benefit was wrongly given to the petitioner and, therefore, the said benefit was withdrawn and consequential order of recovery was passed. The said order dated 17th March, 2003, is annexed at Annexure-A with this petition. It is argued by Mr.Vyas that before passing the impugned order, the petitioner was not given any hearing and since the order in question will have civil consequences, at least the petitioner was required to be heard. According to the petitioner, the department, itself, gave him such benefit and he has not played any role in getting higher scale. If it is department's mistake, the petitioner should not be penalised.

3) Mr.Munshaw, on the other hand, submitted that three other employees, who were recruited along with the petitioner on the same post, they are not given the said benefit and only the present petitioner was given such benefit. He submitted that, therefore, the petitioner should not be allowed to continue with this benefit, which is wrongly given to him.

4) Since it is not in dispute that the impugned order is passed without hearing the petitioner, the same is required to be set aside only on this limited ground, as it is passed in violation of principles of natural justice. The respondents may pass appropriate order after hearing the petitioner, as expeditiously as possible, and in accordance with law. Under the circumstances, the order in question is set aside. Till appropriate order is passed after hearing the petitioner, further recovery may not be effected and status quo as on today be maintained. Such order may be passed as early as possible and preferably within a period of two months from today. Mr.Vyas has assured the Court that his client will cooperate in the departmental proceedings. If the petitioner do not cooperate in the departmental proceedings, it will be open for the respondents to pass appropriate order even ex-parte.

5) This petition is accordingly allowed to the aforesaid extent. Rule is made absolute accordingly. No costs.

(P.B.Majmudar, J.)

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